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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 929.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

BURTON M. FORD, WALTER W. OLIVER, AND JAMES CONNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 21, 1878.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, at the district aforesaid, before the judges thereof, on Monday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-eight and of our Independence the one hundred and third.

WILLIAM H. BRADLEY, *Clerk.*

THE UNITED STATES OF AMERICA
v.
BURTON M. FORD, WALTER W. OLIVER, AND James Conner. } Debt.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twentieth day of November, A. D. 1875, came the said plaintiff, The United States of America, by J. D. Ward, its attorney for said district, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, its præcipe for a writ of summons against said defendant in said entitled cause, which said præcipe is in the words and figures following, to wit:

Præcipe.

2 Circuit court of the United States of America for the northern district of Illinois.

THE UNITED STATES OF AMERICA
v.
BURTON M. FORD, WALTER W. OLIVER, AND James Conner.

In an action of debt. Debt, $12,000; dam., $12,000.

The clerk will please issue a summons in the above case returnable to December term of said court, A. D. 1875.

J. D. WARD,
Attorney of the United States
for the Northern District of Illinois.

(Endorsed:) Filed Nov. 20, 1875. Wm. H. Bradley, clk.

And on the same day a writ of summons issued out of said clerk's office against said defendants in said entitled cause, which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

3 We command you to summon Burton M. Ford, Walter W. Oliver, and James Conner, if found in your district, to be and appear

before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto the United States of America in a plea of debt of twelve thousand dollars, and for the detention of said debt to their damage, as they allege, of twelve thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 100th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I served the within writ upon Burton M. Ford, Walter W. Oliver, and James Conner, therein named, by reading the same to them and in their presence and hearing on the 20th day of November, A. D. 1875.

B. H. CAMPBELL,
U. S. Marshal.
By L. O. GILMAN, *Deputy.*

4 (Endorsed:) Filed Jan'y 18th, A. D. 1876. W. H. Bradley, clerk.

Afterwards, to wit, on the 20th day of December, A. D. 1875, said plaintiff, by its attorney, filed in said clerk's office its declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

Circuit court of the United States of America, for the northern district of Illinois, of the December term of said court, in the year of our Lord one thousand eight hundred and seventy-five.

The United States of America, plaintiffs in this suit, by Mark Bangs, the attorney of the United States for the northern district of Illinois, complain of Burton M. Ford, Walter W. Oliver, and James Conner, partners under the name and style of B. M. Ford, Oliver & Co., defendants in this suit of a plea that the said defendants render unto the said plaintiffs the sum of twelve thousand dollars, lawful money of the said United States, which the said defendants owe to and unjustly detain from said plaintiffs.

For that whereas the said defendants heretofore, to wit, on or about the 1st day of January, in the year of our Lord one thousand eight
5 hundred and seventy-five, and on divers days and times between that day the first day of May, A. D. 1875, to wit, in the county of Cook, in the State of Illinois, and in the northern district of Illinois, removed and aided and abetted in the removal of distilled spirits, to wit, eight thousand gallons, on which taxes were and are imposed by the internal revenue laws of the United States, but on which distilled spirits the said taxes had not and have not been paid, to a place other than the distillery warehouse provided by law, contrary to the provisions of the statute of the United States in such case made and provided; whereby and by virtue of said statute the said defendants did then and there forfeit and become liable to pay the said plaintiffs the sum of twelve thousand dollars penalty, said sum being double the tax

imposed by law as aforesaid on said distilled spirits so removed. And by reason of the premises, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to have and demand of and from the said defendants the sum of twelve thousand dollars so forfeited as aforesaid, being the sum above demanded.

And whereas also the said defendants heretofore, to wit, on or about the first day of January, A. D. 1875, and on divers days and times between that day and the first day of May, A. D. 1875, to wit, in the
6 county of Cook, in the State of Illinois, and in the northern district of Illinois, concealed and aided in the concealment of certain quantities of distilled spirits, to wit, eight thousand gallons, on which taxes were and are imposed by the internal-revenue laws of the United States, but on which distilled spirits the said taxes had not and have not been paid, which said distilled spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the provisions of the statute of the United States in such cases made and provided, whereby, and by virtue of the provisions of said statute, the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of twelve thousand dollars penalty, said sum being double the tax imposed by law as aforesaid on said distilled spirits so removed and concealed. And by reason of the premises, and by virtue of the statute in such case made and provided, an action hath accrued to the said plaintiffs to have and demand of and from the said defendants the sum of twelve thousand dollars so forfeited as aforesaid, being the sum above demanded.

And whereas also the said defendants heretofore, to wit, on or about the first day of January, A. D. 1875, and on divers days and times between that day and the first day of May, A. D. 1875, to wit, in the county of Cook in the State of Illinois, and in the northern district of
7 Illinois, removed and aided and abetted in the removal of certain quantities of distilled spirits, to wit, eight thousand gallons on which taxes were and are imposed by the internal-revenue laws of the United States, but on which distilled spirits the said taxes had not and have not been paid, from a distillery warehouse in a manner other than was and is provided by law, contrary to the provisions of the statute of the United States in such case made and provided, whereby and by virtue of the provisions of said statute the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of twelve thousand dollars penalty, said sum being double the tax imposed on said distilled spirits by the internal-revenue laws of the United States on said distilled spirits so removed. And, by reason of the premises and by force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to have and demand of and from the said defendants the sum of twelve thousand dollars so forfeited as aforesaid, being the sum above demanded.

And whereas also the said defendants heretofore, to wit, on or about the first day of January, A. D. 1875, and at divers days and times between that day and the first day of May, A. D. 1875, to wit, in the county of Cook in the State of Illinois, and in the northern district of
8 Illinois, had in their possession and custody goods, wares, merchandise, articles, and objects, to wit, eight thousand gallons of distilled spirits on which taxes were and are imposed by the internal-revenue laws of the United States, for the purpose of selling the same in fraud of the said internal-revenue laws, and with design to avoid and fraudulently evade the payment of the said taxes imposed hereon, contrary to the provisions of the statute of the United States in such case

made and provided, whereby and by virtue of the provisions of said statute the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of twelve thousand dollars penalty, said sum being double the amount of the taxes fraudulently evaded and attempted to be evaded as aforesaid. And, by reason of the premises and by force of the statute in such case made and provided, an action hath accrued to the plaintiffs to demand and have of and from the said defendants the sum of twelve thousand dollars so forfeited as aforesaid, being the sum above demanded. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of twelve thousand dollars in the several counts above specified, or any part thereof, to the said plaintiffs, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of twelve
9 thousand dollars, and therefore they bring their suit, etc.

MARK BANGS,
United States Attorney, Northern District of Illinois.

(Endorsed:) Filed Dec. 20, 1875. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 7th day of October, A. D. 1876, in the adjourned October term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA)
v. } Debt.
BURTON M. FORD ET AL.)

Now comes the district attorney, and it appearing to the court that the defendant had been duly served with process and had failed to plead, and they being now ruled to plead instanter, and they failing to plead or answer the rule, and the defendants being now each three times solemnly called come not, but make default, it is thereupon considered by the court that their defaults be entered.

Afterwards, to wit, on the 9th day of October, A. D. 1876, in the said adjourned October term of said court, in the record of the pro-
10 ceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA)
v. } Debt.
BURTON M. FORD ET AL.,)

Now come the defendants, by their attorney, and move the court to set aside the default entered herein on Saturday last.

Afterwards, to wit, on the 11th day of October, A. D. 1876, in the said adjourned October term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA)
v. } Debt.
BURTON M. FORD ET AL.)

On motion of the district attorney the default of the defendant entered on Saturday last is set aside and vacated, and the defendants are hereby ruled to plead by Monday next.

Afterwards, to wit, on the 20th day of October, A. D. 1876, said defendants, by their attorneys, filed in said clerk's office their pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

Pleas.

11 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court, in and for the northern district of Illinois. To the October term, A. D. 1876.

THE UNITED STATES OF AMERICA
vs.
BURTON M. FORD, WALTER W. OLIVER, AND James Conner, partners under the name and style of B. M. Ford.

And the said defendants, by Sidney Smith and Leonard Swett, their attorneys, come and defend the wrong and injury when, &c., and say that they do not, nor does either or any of them, owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this the said defendants put themselves upon the country, &c.

SIDNEY SMITH AND LEONARD SWETT,
Attorneys for Defendants.

And for a further plea in this behalf said defendants say actio non, because they say that heretofore, to wit, on the twenty-seventh day of December, A. D. 1875, at Chicago, at, to wit, said northern district of Illinois, the said plaintiffs and the said defendants entered into an agreement by which it was, among other things, agreed that if the said
12 defendants would testify on behalf of the plaintiffs frankly and truthfully, when required, in reference to a conspiracy among certain government officials in the revenue service and other parties, then known to exist, whereby the honest manufacture of spirits and payment of the tax had been rendered practically impossible, and should plead guilty to one count in an indictment then pending against them in the district court, in and for said northern district, and should withdraw their pleas in a certain condemnation case then pending against them in said district court, the said plaintiffs would recall any and all assessments under the internal revenue laws then made against said defendants, and that no more assessments under said law should be made against said defendants, and that no proceedings other than said condemnation case should be prosecuted against said defendants, and that no new proceedings should be commenced against said defendants on account of transactions then past; and these defendants aver that they and each of them have fully performed said contract on their part, and defendants further aver that this suit is a proceeding other than said condemnation case, and that this suit is for the recovery upon transactions prior to the entering into said agreement; and this the said defendants are ready to
13 verify. Wherefore they pray judgment, &c.

SIDNEY SMITH AND LEONARD SWETT,
Attorneys for Defendants.

(Endorsed:) Filed Oct. 20, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 8th day of May, A. D. 1877, said plaintiff, by its attorney, filed in said clerk's office its similiter to the first plea and demurrer to the second plea of said defendants in said entitled cause, which said similiter and demurrer are in the words and figures following, to wit:

Similiter to first plea and demurrer to second plea.

In the circuit court of the United States of America for the northern district of Illinois. May term, 1877.

THE UNITED STATES, ETC., *vs.* BURTON M. FORD AND OTHERS. } No. 13043. Debt.

And the said plaintiffs, as to the plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, do the like.

And the said plaintiffs, as to the plea of the said defendants by them secondly above pleaded, say that the same and the matters therein
14 contained in manner and form, etc., are not sufficient in law to bar the said plaintiffs, etc., and that they are not bound by law to answer the same; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment, etc.

MARK BANGS,
U. S. Attorney.

(Endorsed:) Filed May 8, 1877. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 29th day of June, A. D. 1878, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

THE UNITED STATES OF AMERICA *v.* BURTON M. FORD ET AL. } Debt.

Now comes the district attorney, and come also the defendants by their attorneys, and by agreement the demurrer of the plaintiffs to the pleas of the defendants herein is submitted to the court, and the court takes the same under advisement.

And afterwards, to wit, on the 30th day of September, A. D. 1878,
15 in the July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

THE UNITED STATES OF AMERICA *vs.* BURTON M. FORD ET AL. } Debt.

The court, having considered and being now sufficiently advised upon the demurrer of the plaintiffs to the plea of the defendants, herein overrules said demurrer; and, the district attorney electing to abide by said demurrer, it is thereupon ordered by the court that this cause be dismissed.

16 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein the United States of America is the plaintiff, and Burton M. Ford et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 11th day of October, A. D. 1878, and of our Independence the 103d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

17 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is before you in said circuit court, between the United States of America, plaintiff, and Burton M. Ford, Walter W. Oliver, and James Conner, in an action of debt, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears; and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1878, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

18 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Burton M. Ford, Walter W. Oliver, and James Conner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1878, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the United States of America are plaintiffs, and Burton M. Ford, Walter W. Oliver, and James Conner, defendants, to show cause, if any there be, why the errors in said writ mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 9th day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

H. W. BLODGETT, *Judge.*

19 I hereby accept service of the within writ of citation and enter the appearance of the within-named Burton M. Ford, Walter W. Oliver, and James Conner, defendants.

Chicago, Oct. 10, 1878.

CHAS. H. REED &
EDMUND JUSSEN,
Att'ys for Def'ts.

(Indorsed:) 889. Supreme Court of the United States. The United States of America vs. Burton M. Ford et al. Citation. To October term, A. D. 1878.

I have served the within writ of citation upon Charles H. Reed, attorney of record for the within-named defendants, Burton M. Ford, Walter W. Oliver, and James Conner, by personally delivering a true copy of the same to said Reed, this 10 day of October, 1878.

I also personally served the same upon Edward Jussen, an attorney, by reading the same to him, this 10 day of October, A. D. 1878.

J. S. HILDRUP,
U. S. Marshal.
D. D. SABIN,
Deputy.

Marshal's fees, 2 service, $4.00.

(Indorsement on cover:) No. 929. The United States, plaintiff in error, vs. Burton M. Ford, Walter W. Oliver, & James Conner. N. Illinois C. C. U. S. Filed 21st October, 1878.